104

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No. 07-1555

Supreme Court, U.S.
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In The
Supreme Court of the United States

GERMAR SCHEERER, A/K/A GERMAR RUDOLF,

Petitioner,

v.

MICHAEL B. MUKASEY, U.S. ATTORNEY GENERAL; MICHAEL CHERTOFF, SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

SUPPLEMENTAL BRIEF TO PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

SUPPLEMENTAL BRIEF SUBMITTED PURSUANT TO SUP. CT. RULE 15.8

Pursuant to Sup. Ct. R. 15.8, "[a]ny party may file a supplemental brief at any time while a petition for writ of certiorari is pending, calling attention to new cases... not available at the time of a party's last filing."

In his Petition for Writ of Certiorari, Petitioner stated that, since the Eleventh Circuit's decision in *Scheerer II* discussed therein, both the Ninth and Second Circuit Courts of Appeals have considered the question at bar and rejected the reasoning of the Eleventh Circuit on the very grounds that the *Scheerer II* Court chose to ignore: regulatory intent, BIA precedent, and the interests of justice. *See Kalilu v. Mukasey*, 516 F.3d 777, 779 (9th Cir. 2008); *Sheng Gao Ni v. Board of Immigration Appeals*, 520 F.3d 125 (2d Cir. 2008). Both courts held that the BIA abused its discretion in denying a motion to reopen to allow for an arriving alien in removal proceedings to stay those proceedings and obtain a determination of their adjustment of status applications. As of July 25, 2008, the Seventh Circuit has now joined the majority holding of the Second and Ninth Circuits reasoning that to hold otherwise would preclude the applicant's ability to meaningfully exercise his right to file an application for adjustment of status as provided for by regulation. *See Ceta v, Mukasey*, ___ F.3d. ___, 2008 WL 2854153 (7th Cir. 2008).

In *Ceta*, the Seventh Circuit held in favor of the petitioner under the exact reasoning as is proffered in the present Petition before this Honorable Court:

> In our view, the fact that [petitioner's] application, in accordance with the amended regulation, will not be adjudicated by the immigration courts is not a sound or responsive reason for denying his continuance request. Indeed, granting a continuance in appropriate cases, as contemplated in the *Interim Rule Notice,* will ensure that the immigration courts do not intrude into the USCIS' new role, under the amended regulations, as the sole adjudicator of adjustment applications. Furthermore, any difficulty in coordinating the proceedings-- for example, after the USCIS adjudicates the adjustment application--may be resolved by counsel notifying the IJ of the ultimate outcome of the adjustment application.

Id. at *7 (citations omitted).

Petitioner files this supplemental brief to notify this Honorable Court that there is now a 3-1 split ripe for resolution. Further, it is Petitioner's case, appealed from the Eleventh Circuit, which is now in the clear minority, and it is Petitioner to whom manifest injustice is being incurred.

Therefore, this Honorable Court should grant *certiorari*, resolve this split, and restore consistency and justice across the circuits.

CONCLUSION

For the aforementioned reasons and the reasons discussed in Petitioner's Petition for Writ of Certiorari, the petition for writ of *certiorari* should be granted.

Respectfully submitted,

/s/

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